

Panaji, 19th September, 2003 (Bhadra 28, 1925)

SERIES II No. 25

OFFICIAL GAZETTE



GOVERNMENT OF GOA

SUPPLEMENT

No. 4

GOVERNMENT OF GOA

Department of Labour

Order

No. CL/Pub-Awards/98/3086

The following Award dated 6-6-2000 in Reference No. IT/29/88 given by the Industrial Tribunal, Panaji-Goa is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 19th June, 2000.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/29/88

Shri Bhiku Priolkar,
Non-Mon Karawada,
House No. MHN-102,
Vasco-da-Gama, Goa.

Workman/Party I

V/s

M/s. Anant V. Sarmalkar,
P.O. Box No. 11,
Vasco-da-Gama, Goa.

Employer/Party II

Workman/Party I — Represented by Shri Subhas Naik.

Employer/Party II — Represented by Adv. Shri M. S. Bandoekar.

Panaji, dated 6th June, 2000.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 28th July, 1988 bearing No. 28/23/88-ILD referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Anant V. Sarmalkar, Vasco-da-Gama, in terminating the services of Shri Bhiku Priolkar, Car Driver with effect from 15-12-1986 is legal and justified?"

If not, to what relief the workman is entitled to?"

2. On receipt of the reference a case was registered under No. IT/29/88 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman-Party I (for short, "Workman") filed his statement of claim at Exb. 2. The case of the workman in brief is that he was working with the Employer-Party II, (for short, "Employer") since 30-4-76 as a driver and he was confirmed in service w.e.f. 1-11-76. On 16-8-84 the workman received a transfer order stating that he was transferred to the Head Office and he was attached as driver to the Managing Director Shri N. R. Bandoekar. Somewhere in July-August, 1986 the employer announced that there was surplus staff and as such they desire to retrench some staff. The employer

announced a Voluntary Retirement Scheme stating that all the workman who submit their resignation on or before 18th August, 1986 would be given compensation of 65 days wages for each completed year of service besides other legal dues. The Employer displayed on the notice board a list of those workman who according to the employer were surplus and the name of the workman figured in the said list. The workman was called by the Managing Director Mr. Bandekar to his office on 14th August, 1986 and told him that though his name figured in the list displayed on the notice board he should not leave the job because he required his services and thereafter he was asked to meet his P. A., Shri Rajendra Prasad. Mr. Rajendra Prasad asked him to sign on a piece of paper on which he had written something in his own hand and when the workman enquired about it he was told that it was regarding claim of some office pending bills and in good faith the workman signed the said piece of paper. On 15-12-86 the workman reported for duty as usual and brought the Managing Director Mr. N. R. Bandekar to the office in car as usual. Soon after reaching the office, Mr. Bandekar asked the workman to meet him in his office and when he met he asked him why he had met his wife with the vouchers to which he informed that he had approached her in connection with the pending bills. Thereafter Mr. Bandekar told the workman not to come for duty from that day i.e. from 15-12-86 itself stating that he had resigned from service. When the workman expressed his surprise Mr. Bandekar produced a letter written in the hand writing of Mr. Prasad dated 14-8-86 bearing the signature of the workman. Thereafter the workman wrote a letter dated 17-12-86 to the employer, explaining that he had not committed any mistake and the employer should reconsider their decision. However, there was no response from the employer and therefore the employer was compelled to approach the Labour Commissioner for his intervention in the matter. The conciliation proceedings held by the Labour Commissioner ended in failure and the failure report was submitted to the Government. The workman's case is that the termination of his service by the employer w.e.f. 15-12-86 is illegal and unjustified and he was not given one month's notice nor any retrenchment compensation was paid to him nor any misconduct was committed by him. His case is that the letter dated 14-8-86 which is in the handwriting of Mr. Prasad, the P. A. to the Managing Director was obtained with misrepresentation and fraud and hence the said resignation letter is not legally valid. The workman in the alternative claim that since the

purported resignation letter was tendered with immediate effect, the employer should have accepted the said resignation letter with immediate effect and they could not have accepted the resignation at a later date after several months. The workman therefore claim that he is entitled to be reinstated in service with full back wages and continuity in service since termination of his service is illegal and unjustified.

3. The employer filed written statement at Exb. 3. The employer stated that the workman was appointed as a driver vide letter dated 30-4-76 and he was given all the benefits and special increments. The employer stated that by letter dated 14-8-86 the workman submitted his resignation stating that the same should be accepted with immediate effect. However, the employer accepted the resignation on 15-12-86 and he was informed accordingly. The employer stated that there is no connection between the resignation of the workman and the Voluntary Retirement Scheme proposed by the employer. The employer stated that the workman never desired nor applied for under the Voluntary Retirement Scheme. The employer denied that Mr. Narayan Bandekar called the workman in his office or that it was told to him that he should not leave the job because his services are required. The employer denied that Mr. N. Bandekar asked the workman to meet his P. A. Mr. Prasad or that Mr. Prasad asked the workman to sign on the piece of paper or that Mr. Prasad informed him that the said piece of paper was in connection with his pending bills. The employer denied that any letter dated 17-12-86 was sent by the workman to the employer. The employer denied that they terminated the services of the workman vide letter dated 15-12-86. The employer stated that the case of the workman is that of resignation from service which is totally different from termination of service. The employer stated that since the workman resigned from service of his own, there is no question of notice pay or retrenchment compensation. The employer denied that the signature of the workman was obtained on the letter dated 14-8-86 by Mr. Rajendra Prasad fraudulently or by misrepresentation. The employer stated that the resignation letter dated 14-8-86 of the workman was accepted by the management on 15-12-86 and he was informed by letter dated 15-12-86 that his resignation was accepted. The employer stated that the resignation of the workman has nothing to do with the Voluntary Retirement Scheme and since he did not opt for Voluntary Retirement under the said Scheme, the employer was not bound to offer him the benefits under the said Scheme. The employer denied that

the services of the workman were terminated from 15-12-86 or that the alleged termination is illegal and unjustified. The employer stated that the workman is not entitled to any relief and the reference is liable to be rejected. The workman thereafter filed rejoinder at Exb. 4.

4. On the pleadings of the parties, following issues were framed at Exb. 5:

- 1) Whether the so called letter of resignation is in the handwriting of Rajendra Prasad— P. A. to Shri N. R. Bandekar, Managing Director and that the workman who cannot read and write just signed below the same?
- 2) Whether Party II proves that this is a letter of resignation signed by the workman on 14-8-1986 but resignation was actually accepted on 15-12-1986 as alleged in para 1 (b) of the Written Statement?
- 3) Whether there is a case of resignation— simplicitor or whether this is a case of termination without notice, without adhering to proper procedure?
- 4) Whether the management of M/s. Anant V. Sarmalkar illegally terminated the services of the driver Shri Bhiku Priolkar, w.e.f. 15-12-1986?
- 5) If so, to what relief is the workman— driver entitled to?
- 6) My findings on the issues are as follows:

Issue No. 1: The resignation letter is in the handwriting of Mr. Rajendra Prasad and the workman signed the same knowing that it his resignation letter.

Issue No. 2: In the affirmative.

Issue No. 3: This is a case of resignation simplicitor.

Issue No. 4: In the negative.

Issue No. 5: The workman is not entitled to any relief.

REASONS

6. Issue Nos. 1 to 4: All these issues are taken up together as they are inter-related. Shri Subhas Naik, representing the workman submitted that the services of the workman were terminated by the employer

from 15-12-1986 because his alleged resignation was accepted by the employer w.e.f. 15-12-1986. He submitted that the workman had never submitted any resignation letter but it was obtained by the P. A., to the Managing Director by misrepresentation. He submitted that the Managing Director, Mr. Narayan Bandekar who has been examined by the workman as his witness has stated in his evidence that his P. A. told him that the workman had resigned for better prospects, but in the resignation letter dated 14-8-86, different reason for resignation is given. He submitted that in the written statement the employer denied that the resignation letter is in the handwriting of the P. A., but in the cross of the workman it was suggested to him that the letter was written by the P. A., as per his say. He referred to the letter dated 17-12-86 of the workman and submitted that in the said letter the workman had protested about termination of his service. Shri Subhas Naik submitted that all the above facts go to show that the workman had not resigned but the resignation letter was obtained from him by misrepresentation and more so because the workman has stated that he does not know to read and write English. He submitted that in the written statement the employer has admitted that the workman's name figured in the list displayed on the notice board, with regards to the Voluntary Retirement Scheme, and therefore if the resignation of the workman was under the said Scheme he should have been given benefits under the said Scheme. He submitted that if the workman had resigned from service with immediate effect, the employer ought to have accepted the said resignation with immediate effect and not on 15-12-1986. He submitted that since the workman had never resigned, termination of his service w.e.f. 15-12-1986 is illegal and unjustified and the workman is entitled to reinstatement in service with full back wages.

Adv. Shri Bandodkar, representing the employer, submitted on the other hand that since it is the case of the workman that his services are terminated, the burden is on him to prove the same. He submitted that the services of the workman were not terminated by the employer but the workman resigned from service and his resignation was accepted by the employer w.e.f. 15-12-1986. He submitted that letter dated 14-8-1986 which is signed by the workman shows that he has resigned from service and the letter dated 17-12-1986 which is also sent by him to the employer does not mention that his resignation was obtained fraudulently or by misrepresentation. He submitted that the Managing Director Mr. Narayan

Bandekar who was examined by the workman as his witness has stated that he did not accept the resignation letter of the workman with immediate effect because he needed him as a driver and he wanted to make alternate arrangements. He submitted that the list which was displayed on the notice board was of the surplus employees and not of those employees who had opted for Voluntary Retirement Scheme. He submitted that the employer was not bound to accept the resignation of the workman with immediate effect and it was lawful for the employer to accept the same subsequently. He submitted that since the workman himself has resigned from service there is no question of reinstating him in service with full back wages or granting him any other relief.

7. The dispute which has been referred by the Government is on the issue whether action of the employer in terminating the services of the workman from 15-12-1986 is legal and justified. The reference therefore presupposes that the employer terminated the services of the workman from 15-12-1986, whereas the employer has taken the defence in these proceedings that the workman's services were not terminated but his resignation was accepted w.e.f. 15-12-1986. The employer's case is that the workman resigned vide letter dated 14-8-1986 with immediate effect but his resignation was accepted with effect from 15-12-1986. The Bombay High Court in the case of Sheshrao B. Hatwar v/s Presiding Officer, First Labour Court and others reported in 1990 II CLR 726 has held that the mere wording of the reference is not decisive in the matter of tenability of a reference. It may contain the defence or not. If points of difference are discernible from the material before the Court of Tribunal, it has only one duty and that is to decide the points on merits and not to be astute to discover formal defects in the wording of the reference. Therefore in view of the above decision of the Bombay High Court it is to be seen whether the employer terminated the services of the workman or whether the termination of service is on account of the resignation tendered by the workman. Issue has been framed to that effect.

8. The contention of the workman is that the employer had floated a voluntary retirement scheme and the last date for submitting the application opting for the said scheme was 18th August, 1986. His contention is that though his name figured in the list displayed on the notice board, the Managing Director called him and asked him not to opt for the said scheme as his services were required. His contention

is that he did not submit any resignation letter to the employer but his signature was obtained on the letter dated 14-8-1986 purporting to be the resignation letter, by mis-representation. His contention is that he does not know to read and write English and said letter was written by Mr. Prasad, the P. A. to the Managing Director and his signature was obtained on the same by misrepresentation to him that the said writing was pertaining to his pending bills.

9. In the present case the workman has examined himself and Mr. Narayan Bandekar, the Managing Partner of the employer firm, in support of his case. The employer has not led any evidence in the matter. The letter dated 14-8-1986 has been produced at Exb. W-6. The workman has identified his signature on the said letter at point "A". He has stated in his deposition that he does not know to read and write English and that the contents of the said letter were written by Mr. Prasad, the P. A. to the Managing Director. He has stated that he was told by Mr. Prasad that the contents of the said letter were pertaining to his pending bills. His case in short is that he has not given the resignation letter dated 14-8-1986, but it was obtained from him by Mr. Prasad by mis-representation. Since the workman has identified his signature on the letter dated 14-8-1986 Exb. W-6 at point, A the burden was on him to prove that the said letter was obtained from him by, Mr. Prasad by mis-representation. That the contents of the letter dated 14-8-1986 are in the handwriting of Mr. Prasad, the P. A. to the Managing Director stands proved from the suggestion which has been put to the workman in his cross examination by the employer. It was suggested to him in his cross that Mr. Prasad had written the resignation letter as per his say and that he was aware of the contents of the same. The workman denied this suggestion. However, the suggestion itself shows that the employer admits that the contents of the said letter of resignation are in the handwriting of Mr. Prasad. It is to be seen now whether the workman has succeeded in proving that he did not know what was written in the said letter and that it was obtained from him by Mr. Prasad by mis-representation. I do not find any evidence on record to show that the said letter of resignation was obtained by mis-representation. The workman in his deposition has stated that he signed the letter dated 14-8-1986 because he was told that the said letter was pertaining to his pending bills. The workman has not stated as to which were his bills that were pending for payment. No details of the said bills have been given by him. The letter dated 17-12-1986 Exb. W-5 written by the

workman to the Managing Director does not refer to any of his bills pending prior to 14-8-1986. The said letter refers to vouchers submitted by him a week before 17-12-1986. Therefore it is difficult to accept his contention that he signed the said letter believing that it was pertaining to his pending bills. The workman in his deposition has stated that on 15-12-1986 when he has gone for work, the Managing Director called him and told him that he should not come for duty because he had resigned from service and that when he denied that he had resigned he showed to him the letter stating that he was accepting it on the same day. He has stated that after his services were terminated on 15-12-1986, he wrote a letter dated 17-12-1986 to the Managing Director. He has produced the said letter at Exb. W-5. I have gone through the said letter. The said letter does not speak a single word about his resignation. Now if according to the workman he had not submitted any resignation letter or that the letter dated 14-8-1986 was obtained from him by Mr. Prasad by misrepresenting him that it was pertaining to his pending bills or that he signed the said letter without knowing its contents, he ought to have stated so in the said letter dated 17-12-1986 as it was the first opportunity available to him after he had come to know from Managing Director that his services are terminated because his resignation was accepted. Nothing about the same has been mentioned by the workman in the said letter and on the contrary the said letter mentions only about non-payment of the amount due to him. There is no other letter from the workman to the employer denying that he had submitted his resignation letter. He has admitted in his cross that he had not raised before the Labour Commissioner that his resignation was forcibly obtained. He has stated in his cross that he know Prasad for 6 years and his relations with him were good. All the above evidence goes to show that the workman has raised the issue of obtaining his resignation by mis-representation for the first time before this Tribunal in the present proceedings.

10. The workman has examined Mr. Narayan Bandekar, the Managing Partner of the employer-firm in support of his case. However, his evidence is of no help to the workman. On the contrary his evidence has helped the employer. In fact it is very surprising that the workman should have examined Mr. Narayan Bandekar, who is the Managing Partner of the employer-firm as his witness. He has stated in his deposition that when the letter dated 14-8-1986 Exb. W-6 was given to him by his P. A. he told him that since he did not have

any driver he would like to talk to the workman which he accordingly did and requested him to wait for some time till he could get some other person as a driver. He has stated that though it was mentioned in the letter of resignation that it should be accepted with immediate effect, he did not accept it with immediate effect because he needed his services and he wanted to persuade him to wait for some time till alternate arrangements could be made. He has further stated that he accepted the resignation of the workman on 15-12-1986. He has identified his signature on the resignation letter dated 14-8-1986 Exb. W-6 at point "B". This letter is produced by the workman himself in his evidence. There is an endorsement "Accepted" on the said letter above the signature of Managing Director, Mr. Narayan Bandekar and the date is 15-12-1986. Since this letter is produced by the workman himself it shows that the workman was aware that the employer has accepted his resignation with effect from 15-12-1986. In the absence of any evidence from the workman to the effect that his resignation was obtained by mis-representation it is established from the evidence which is discussed above that the workman had submitted the letter dated 14-8-1986 Exb. W-6 which was in the handwriting of Mr. Prasad, stating that he is resigning with immediate effect and he signed the same knowing that it is his resignation letter. Mr. Narayan Bandekar the Managing Partner of the employer-firm did not accept the resignation with immediate effect, but asked the workman to continue till alternate arrangement could be made, and the workman continued to work; the employer accepted the resignation of the workman w.e.f. 15-12-1986. Shri Subhas Naik, representing the workman has contended that the employer ought to have accepted the resignation with immediate effect and not on 15-12-1986. He has not cited any proposition of law or any case law in support of his above contention. However, I do not agree with this contention of Shri Subhas Naik. In my view even if an employee resigns from service with immediate effect, the employer is not bound to accept the resignation with immediate effect. It is permissible for the employer to accept the resignation subsequently and the employee is entitled to withdraw his resignation before it is accepted by the employer. What is required is the acceptance of the resignation by the employer. In the case of J. D. Kashyap v/s National Seeds Corporation Ltd., reported in 2000 I CLR 554, the petitioner employee applied for voluntary retirement on 17th July, 1992 under the Voluntary Retirement Scheme. The respondent employer kept the application pending for almost about one year and eleven months. On 26th April,

1994 the employee submitted an application withdrawing his application dated 17th July, 1992. However, thereafter the employer by order dated 24th May, 1994 accepted the employee's application dated 17-7-1992 for voluntary retirement. The Delhi High Court held that merely because the application for withdrawal was submitted one year eleven months after the date of his application for voluntary retirement is no ground in not allowing the employee to withdraw the same, and it was also a fact that for all these years even the Management did not take any action in accepting his application for voluntary retirement. The High Court further held that before an application for voluntary retirement/resignation is accepted, it is open for the employee to withdraw the same. In the case of Power Finance Corporation Ltd., v/s Pramod Kumar Bhatia, reported in 1997 I CLR 1111, the Supreme Court has held that it is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. From the above decisions it follows that in the case of voluntary retirement or resignation there must be an acceptance of the same by the employer and the employee should be relieved of the duty and further the employee is entitled to withdraw his voluntary retirement or resignation before it is accepted by the employer. In the present case the workman could have withdrawn his resignation before it was accepted on 15-12-1986 but he did not do so. Therefore there is no substance in the contention of the workman that his resignation ought to have been accepted with immediate effect. In the present case the acceptance of the resignation of the workman by the employer w.e.f. 15-12-1986 was legal and according to the workman as well as the employer the workman was relieved of his duties from 15-12-1986. In the light of what is discussed above, I hold that the letter dated 14-8-1986 is in the handwriting of Mr. Rajendra Prasad, the P. A. to the Managing Director/Partner Mr. Narayan Bandekar and the same is signed by the workman knowing that it is his resignation letter; that the employer did not terminate the services of the workman but by the said letter the workman submitted his resignation with immediate effect; that the acceptance of the resignation letter dated 14-8-1986 by the employer w.e.f. 15-12-1986 is legal and justified. I, therefore answer the issue Nos. 1 to 4 accordingly.

11. Issue No. 5: It has been held by me that the services of the workman were not terminated by the

employer but the termination of the services is on account of the voluntary resigning from service by the workman and acceptance of the same by the employer with effect from 15-12-1986. This being the case the workman is not entitled to any relief. Shri Subhas Naik, representing the workman has contended that if the resignation is accepted by the employer under the Voluntary Retirement Scheme floated by them, then the workman should be paid the benefits under that scheme. He has submitted that in the written statement the employer has admitted that the workman's name figured in the list displayed on the notice board with regards to the Voluntary Retirement Scheme and therefore if the resignation of the workman was under the said Scheme he should have been given benefits under the said Scheme. Adv. Shri Bhandodkar, representing the workman has submitted that the resignation of the workman has nothing to do with the Voluntary Retirement Scheme. He submitted that the list which was displayed on the notice board was not of the employees who had opted for Voluntary Retirement Scheme but it was of the surplus employees. I have gone through the written statement filed by the employer. It is true that para 5 of the written statement the employer has admitted that in the list which was displayed the name of the workman figured. However, the employer did not state that the said list was pertaining to the employees who had opted for the Voluntary Retirement Scheme. On the contrary the employer has made it clear in the said para that there is no connection between the resignation of the workman and the Voluntary Retirement Scheme, and further that the workman never desired nor applied for the said Scheme. Besides, the workman himself has stated in his deposition that alongwith the notice of Voluntary Retirement Scheme, the names of those employees who could opt for the said Scheme was also listed, and his name was included in the said list. In his cross he has stated that he had not made any application to the employer stating that he wanted to opt for Voluntary Retirement Scheme. From the above evidence it is therefore clear that the list wherein the name of the workman figured was not of the employees who had opted for the Voluntary Retirement Scheme but it was of those employees who could opt for the said Scheme. The workman has clearly stated that he did not opt for the said Scheme. Therefore, it the workman himself has stated that he did not opt for the Voluntary Retirement Scheme, he is not entitled to claim the benefits under the said Scheme. The employer has not admitted that the acceptance of the resignation of the workman is under

the said Scheme. Besides, the workman never set up his case that he had opted for the Voluntary Retirement Scheme. On the contrary he has admitted in his evidence that he did not apply for retirement under the said scheme. In the circumstances there is no substance in the contention of the workman that he should have been paid benefits under the Voluntary Retirement Scheme. In the light of what is discussed above, I hold that the workman is not entitled to any relief and hence I answer the issue No. 5 accordingly.

In the circumstances I pass the following order.

ORDER

It is hereby held that there is no termination of service of the workman Shri Bhiku Priolkar, by the Management of M/s. Anant V. Sarmalkar, but the termination of his services is on account of acceptance of his resignation by the Management of M/s. Anant V. Sarmalkar, w.e.f. 15-12-1986 which is legal and justified. It is hereby further held that the workman Shri Bhiku Priolkar is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/3087

The following Award dated 23-5-2000 in Reference No. IT/23/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio
Joint Secretary.

Panaji, 19th June, 2000.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/23/94

Smt. Shalan P. Dessai,
C/o Joquem Fernandes,
2nd Bairo, Santa Cruz,
Ilhas-Goa. ... Workman/Party I

V/s

M/s. H. L. Nathurmali,
Opp. High Court,
Near Secretariat, Panaji-Goa. ... Employer/Party II

Workman/Party - I — Represented by Adv. Shri P. J. Kamat.

Employer/Party - II — Represented by Adv. Shri R. Satardeker.

Panaji, dated 23rd May, 2000.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 13-7-1993 bearing No. 28/27/93-LAB referred the following dispute for adjudication by this Tribunal.

- 1) "Whether the action of the Management of M/s. H. L. Nathurmali, Panaji, in terminating the services of Mrs. Shalan Rane Dessai, Assistant Production Manager, w.e.f. 1-8-1991 is legal and justified?
- 2) If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. IT/23/94 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (For Short "Workman") filed her statement of claim at Exb-4. The facts of the case in brief as pleaded by the workman are that she was initially employed as a sales girl from September, 1982 with the Employer/Party II (For Short "Employer") till the date of termination of her service illegally.

That around January, 1985 she was issued another appointment letter appointing her as a cashier from 1-4-1983 on wage of Rs. 400/- p. m. from January, 1985. That the proprietor of the employer had another establishment known as Natson Garments and the workman was transferred to the said establishment as an Asstt. Manager (Production) and accordingly she worked there from 1-2-1989 on wages of Rs. 900/- p. m. That though she was designated as Asstt. Manager, she continued to do the work of a cashier and she worked at M/s. Natson Garments till 6-12-1990. That she was retransferred to the establishment of the employer and she reported for work there from 7-12-1990 and she worked there as a cashier. At the time when she was transferred back to the employer's establishment she was drawing wages of Rs. 1,000/- p. m. That she was not paid her wages for the month of June, 1991 and July, 1991 nor she was paid bonus for many years though she was entitled to the same. That she was refused employment from 1st August, 1991 and thus her services were illegal terminated without any cause. The workman contented that termination of her services amounts to retrenchment under Section 2 (00) of the I. D. Act, 1947 and since the employer did not comply with the provisions of Section 25-F of the said Act, her termination is illegal and unjustified. The workman contented that she is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 5. The employer stated that the employer's establishment is different and separate from M/s. Natson Garments and they maintain separate account and business activities. The employer stated that workman was employed as a sales girl in September, 1983. She resigned from the said post but after some time she approached the employer again and pleaded for the job and therefore the employer appointed her as a cashier on wages of Rs. 400/- p. m. from 4-4-1983. The employer denied that the workman was transferred to the establishment of M/s. Natson Garments as Asstt. Manager (Production). The employer stated that workman resigned from the employer's establishment and joined M/s. Natson Garments as Asstt. Manager on wages of Rs. 900/- p. m. from 1-2-1989 and she continued to work there till she resigned from 1-12-1990. The employer stated that the workman resigned by letter dated 2-11-1990 which was accepted by M/s. Natson Garments on the same day and she was relieved from services from 1-12-1990 as per her

letter of resignation. The employer denied that the workman worked with M/s. Natson Garments as a cashier till 6-12-1990 or that she was issued a transfer order dated 17-1-1990 and that she reported back to employer's establishment on 7-12-1990 and continued to work there as a cashier. The employer stated that the workman collected all her legal dues and also collected her employment certificates from the employer after her resignation. The employer stated that the workman was not in employment either with them or with M/s. Natson Garments in June or July, 1991 and therefore the question of not paying her wages for the above said months did arise. The employer denied that the workman was refused employment from 1-8-1991. The employer stated that since the workman was employed with M/s. Natson Garments the question of refusal of employment to her by the employer did not arise and also that since she has resigned from service the question of her being retrenched and violating the provisions of Section 25 of I. D. Act, 1947 did not arise. The employer subsequently amended the written statement and raised the pleas that the reference is liable to be dismissed for not joining M/s. Natson Garments as the party to the proceedings and also that the workman Smt. Shalan Dessai is not a workman under I. D. Act, 1947. The employer denied that the workman is entitled to any relief as claimed. The workman filed rejoinder to the written statement at Exb. 6.

4. On the pleadings of the parties issues were framed and thereafter the evidence of the workman was recorded. After completing the evidence of the workman the evidence of the employer was being recorded. On 10-5-2000 when the case was fixed for hearing Advocate Shri P. J. Kamat representing the workman and Adv. Shri R. Satardekar representing the employer submitted that the dispute between the parties was amicably settled and they filed the terms of settlement dated 10-5-2000 at Exb. 27 and prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement dated 10-5-2000 which are duly signed by the parties and their respective Advocate. I am satisfied that the terms of the settlement are certainly in the interest of the workman.

I, therefore accept the submissions made by the parties and pass the consent Award in terms of the settlement dated 10-5-2000 Exb. 27.

ORDER

1. It is agreed between the parties that the Employer Party II shall pay an amount of Rs. 20,000/- (Rupees twenty thousand only) to the workman Party I Ms. Shalan Rane Dessai in full and final settlement of all her claims against the employer.

2. It is agreed between the parties that in view of clause (1) above the workman shall have no claim of whatsoever nature against the employer Party II.

3. It is agreed between the parties that the amount of Rs. 20,000/- shall be paid to the workman on or before 15-9-2000 by equal instalment of Rs. 5,000/- each.

4. It is agreed between the parties that the 1st instalment of Rs. 5,000/- shall be paid on 10-5-2000, second instalment on 10-7-2000, 3rd instalment on 10-8-2000 and the last instalment on 10-9-2000.

5. It is agreed between the parties that if the employer does not make the payment by the due date, the employer shall be liable to pay an interest at the rate of 18% p. m. till the actual payment is made.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/2000/3088

The following Award dated 22-5-2000 in Reference No. IT/136/99 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio
Joint Secretary.

Panaji, 19th June, 2000.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/136/99

Smt. Manik Kamat,
C/o Santosh Kumar,
Segundo Bairro, Santa Cruz,
Ilhas-Goa.

... Workman/Party I

V/s

The Registrar Goa University,
Taleigao Plateau,
Bambolim, Ilhas-Goa.

... Employer/Party II

Workman/Party - I — Absent.

Employer/Party - II — Represented by Adv. Ms.
Fatima Fernandes.

Panaji, dated 22nd May, 2000.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 15-12-1999 bearing No. IRM/CON/(87)/97/6095 referred the following dispute for adjudication by this Tribunal.

1) "Whether the action of the Goa University, Goa in terminating the services of Mrs. Manik Kamat, L.D.C., w.e.f. 16-2-1996, is legal and justified?"

2) If not, to what relief the workperson is entitled?"

2. On receipt of the reference a case was registered under No. IT/136/99 and registered A/D notice was issued to the parties. In pursuance to the said notice the Employer/Party II (For short "Employer") appeared and was represented by Adv. Miss F. Fernandes. Though Workman/Party I (For short "Workman") received the said notice she failed to appear on 25-1-2000 at 10.00 a. m. on which date the case was fixed for filing of the claim statement by the workman. The case was thereafter adjourned to 15-2-2000 at 10.30 a. m. for filing of the statement of claim by the workman. On this date also the workman did not appear and therefore last opportunity was given to

the workman for filing claim statement on 2-3-2000 at 10.30 a. m. On this date also the workman remained absent whereas Adv. Miss F. Fernandes appeared on behalf of the employer and she submitted that since the workman had remained absent and had not filed the statement of claim, the employer also does not want to file any statement of claim/written statement and prayed that the reference be answered against the workman as she has failed to appear.

3. The reference of the dispute was made by the Government at the instance of the workman since she challenged the action of the employer in terminating her services w.e.f. 16-2-1996. It is the workman who had raised an Industrial Dispute. The Bombay High Court, Panaji Bench, in the case of V. N. S. Engg. Services v/s Industrial Tribunal Goa, Daman and Diu and another reported in F. J. R. Vol. 71 at page 393 has held that the obligation to lead the evidence to establish an allegation made by a party is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court has further held that the provision of Rule 10-B of the Industrial Dispute Act which requires the party raising a dispute to file a statement of demands relating to the issues in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite party involved, clearly indicates that the party who raises the Industrial Dispute is bound to prove contention raised by him and Industrial Tribunal or Labour Court would be erring in placing the burden of prove on other party to the dispute. In another case i.e. in the case of V. K. Raj Industries V/s Labour Court (I) and others reported in 1981 (29) F. L. R. 194, the Allahabad High Court has held that the proceedings before the Industrial Court are Judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of the order and if no evidence is produced the party involving the jurisdiction must fail. The High Court also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government be reserved in favour of the workman and he will not be entitled to any relief.

4. In the present case the dispute was raised by the workman as regards termination of services by the employer which according to her is illegal and unjustified and since it was at her instance that the reference of the dispute was made by the Government, the burden was on the workman to prove that the action of the employer in terminating her service was illegal and unjustified. The workman was given sufficient opportunity to appear before this Tribunal and file her statement of claim but the workman did not appear and consequently no statement of claim was filed on her behalf. There is no material before me to hold that the action of the employer in terminating her services is illegal and unjustified. I, therefore hold that the workman has failed to prove that the action of the employer in terminating her services w.e.f. 16-2-1996 is not legal and justified. The reference has to be answered against the workman holding termination of her service as legal and justified.

In the circumstance I pass the following order.

ORDER

It is hereby held that the action of the Goa University, Goa, in terminating the service of workman Mrs. Manik Kamat, L.D.C. w.e.f. 16-2-1996 is legal and justified. I further hold that Mrs. Manik Kamat is not entitled to any relief.

No order as to cost. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/2000/6196

The following Award dated 23-11-2000 in Reference No. IT/69/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio
Joint Secretary.

Panaji, 13th December, 2000.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/69/98

Workmen Rep. by General Secretary,
Gomantak Mazdoor Sangh,
Kamakshi Krupa, Ground Floor,
Khadapa Band, Ponda-Goa. ... Workman/Party I

V/s

The Chairman,
The Madgaon Consumers
Co-operative Society Ltd.,
Old Market, Margao-Goa. ... Employer/Party II

Workman/Party - I represented by Adv. Shri P. Gaonkar.

Employer/Party - II represented by Adv. Shri M. S.
Bandodkar.

Panaji, dated 23rd November, 2000.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 23rd July, 1998 bearing No. IRM/CON/SG/(59)/97/9812 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the Management of the Madgaon Consumers' Co-operative Society Limited, Margao, in dismissing S/Shri Kishor Shirodkar and Aleluia Fernandes, both Billing Clerks, with effect from 17-10-1997, is legal and justified?

If not, to what relief the workmen are entitled?

2. On receipt of the reference a case was registered under No. IT/69/98 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "Union") filed the statement of claim on behalf of the workmen Shri Kishor Shirodkar and Aleluia Fernandes. The facts of the case in brief as pleaded by the Union are that the workmen Shri Kishor Shirodkar and Aleluia Fernandes (for short, "Workmen") were working with the Employer/Party II

(for short, "Employer") as Billing Clerks. That the employer issued a charge sheet dated 14-1-1997 to the workmen and thereafter an enquiry was conducted into the said charge sheet. That the enquiry which was conducted was not fair and proper and the workmen were not allowed to be represented by the office bearer of the union though they had made a request to the employer in that respect. That the employer did not take permission from the Industrial Tribunal before terminating the services of the workmen w.e.f. 17-10-1997 as the dispute on charter of demands was pending before the Tribunal being Reference Case No. IT/79/96. The union contended that the termination of service of the workmen by the employer is illegal and unjustified. The union therefore claimed that the workmen are entitled to be reinstated in service with full back wages and other consequential benefits.

3. The employer filed written statement at Exb. 4. The employer stated that the workmen were charge sheeted by letter dated 14-1-1991 as they had committed the acts of theft, fraud, misappropriation and dishonesty in connection with the business and or property of the employer. The employer stated that the Inquiry Officer conducted the enquiry in a fair and proper manner and the workmen fully participated in the said enquiry. The employer stated that the Inquiry Officer submitted his findings holding that the charge of fraud was proved against the workmen and on receipt of the said findings the show cause notice dated 4-10-1997 was issued to the workmen. The employer stated that on receipt of the reply to the show cause notice from the workmen, the employer dismissed the workmen from service in accordance with the resolution passed by the Managing Committee in their meeting held on 16-10-1997 and accordingly the workmen were dismissed w.e.f. 17-10-1997. The employer denied that the termination of service of the workmen is illegal or unjustified as claimed by the union. The employer denied that the workmen are entitled to reinstatement in service with full back wages or to any other relief. Thereafter the union filed rejoinder at Exb. 5.

4. On the pleadings of the parties, issues were framed at Exb. 6 and the case was fixed for recording the evidence of the parties on preliminary issues. Before the evidence was recorded the parties submitted that they have arrived at a settlement and they filed the terms of the settlement dated 16-11-2000 at Exb. 9

and prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the parties. I, therefore accept the submissions and pass the consent award in terms of the settlement dated 16-11-2000 Exb. 9.

ORDER

1. Mr. Kishor Shirodkar who is concerned in the reference shall be paid a sum of Rs. 7,111/- (Rupees seven thousand one hundred eleven only) as an Ex-gratia/Retrenchment compensation and one month's notice pay of Rs. 2,370.25 (Rupees two thousand three hundred seventy and paise twenty-five only).
2. Similarly Mr. Aleluia Fernandes the other workman who is concerning the reference shall be paid a sum of Rs. 7,509/- (Rupees seven thousand five hundred nine only) as an Ex-gratia/Retrenchment compensation and one month's notice pay of Rs. 1,668.75 (Rupees one thousand six hundred sixty-eight and paise seventy-five only).
3. Mr. Kishor Shirodkar and Mr. Aleluia Fernandes shall be paid Gratuity through L.I.C. being Rs. 7,647/- (Rupees seven thousand six hundred forty-seven only) and Rs. 8,303/- (Rupees eight thousand three hundred three only) respectively as the Gratuity amount covered under the said Scheme. The said amount shall be paid to them within 20 days of signing this settlement.
4. In so far amount mentioned in clauses 1 and 2 respectively against their names, shall be paid at the time of signing this settlement and said amount has been paid today and acknowledgement receipt to that effect has been obtained by the society.
4. In view of this settlement, the Union and both the workers concerned to this reference, admit and confirm that, entire dispute in the reference is conclusively settled and further they have no claim whatsoever nature with the society including the claim of reinstatement and re-employment.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/2000/5434

The following Awards dated 20-10-2000 in Reference No. IT/8/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio
Joint Secretary.

Panaji, 1st November, 2000.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/8/94

Mrs. Indu Powar,
Rep. by the President,
Goa Municipal Workers Union,
Municipal Building,
St. Inez, Panaji-Goa. ... Workman/Party I

V/s

The President,
Canacona Municipal Council,
Canacona-Goa ... Employer/Party II

Workman/Party I — Represented by Adv. Shri C. J. Mane.

Employer/Party II — Represented by Head Clerk Shri B. N. Komarpant.

Panaji, dated 20th October, 2000.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 29-9-93 bearing No. 28/48/93-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the demand of Mrs. Indo Powar, represented through the Goa Municipal Workers' Union, for regularisation of her services from the

initial date of her appointment as daily rated workman, is legal and justified?

If not, to what relief the workman is entitled?

2. On receipt of the reference, a case was registered under No. IT/8/94 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman-party I (For short "workman") filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that she joined the services of the Employer-Party II (For short "employer") as a sweeper on 26th November 1986 on wages of Rs. 15/- per day. She was given rise in wages from time to time and as on the date when she filed her claim statement her wages were Rs. 29/- per day. That though the work done by her is of perennial nature the employer has not purposely regularised her services. That the workman made representation for regularising her services but the employer did not do so. The workman's contention is that she is entitled to regularisation in her service from the date of her appointment and she is also entitled to the amount of short payment in wages since the date of her initial appointment.

3. The employer filed written statement at Exb. 8. The employer denied that the workman was appointed from 26th November, 1986 as a sweeper and stated that she was appointed from 1st June, 1989 as out-door staff on daily wages. The employer denied that the workman is entitled to regularisation in service from the date of her initial appointment as claimed by her. The employer stated that the workman is not entitled to any relief as claimed by her. The workman thereafter filed rejoinder at Exb. 9, reiterating that she joined the services of the employer as a Sweeper from 26th November, 1986 and the work which is being carried out by her is of permanent nature. The workman stated that the employer has not given any reasons for not regularising in service and not paying to her the minimum wages prescribed by the Government.

4. On the pleadings of the parties following issues were framed at Exb. 10.

1. Whether the Party I proves that Mrs. Indu Powar joined services of the employer w.e.f. 26-11-86 on daily wages at the rate of Rs. 15/- per day?
2. Whether the Party I proves that Mrs. Indu Powar is entitled to regularisation of their services from the initial date of her appointment as daily rated workman and hence her demand is legal and justified?

3. Whether the Party I is entitled to any relief?

4. What Award?

5. My findings on the issues are as follows:

Issue No. 1: The workman Mrs. Indu Powar is employed on daily wages from 1st June 1989.

Issue No. 2: The demand of Mrs. Indu Powar for regularisation of her service is legal and justified. She is entitled to regularisation of her service from 1st June 1990.

Issue No. 3: As per para. 10 below.

Issue No. 4: As per order below.

REASONS

6. Issue No. 1: In the present case only the workman has led evidence by examining herself. The employer has not led any evidence though opportunity was given. The employer denied that the workman was employed from 26th November 1986 on daily wages as contended by the workman. In view of this denial the burden was on the workman to prove that she was employed with effect from 26-11-86. The workman has admitted in her deposition that no letter of appointment was issued to her when she was employed. It is the contention of the employer that the workman was employed from 1st June 1989 on daily wages. There is no evidence from the workman to prove her contention that she was employed from 26-11-1986. I, therefore hold that the workman has failed to prove that she was employed from 26-11-1986 on daily wages and it has to be held that she was employed from 1st June 1989 as it is admitted so by the employer. In the circumstance, I answer the issue No. 1 accordingly.

7. Issue No. 2: It has been held by me that the workman has failed to prove that she was employed on daily wages from 26-11-1989. However, the employer has admitted that the workman was employed from 1st June 1989 on daily wages. The workman has examined only herself. She has stated that she joined the services as a helper on daily wages. She has stated that at the time of her appointment she was not told that her appointment was temporary. She has stated that besides her some other persons were working with the employer as helpers and her working hours were the same as that of those other helpers. She

has further stated that the employer regularised the services of the other helpers but did not regularise her services and that she continues to work with the employer on daily wages. In her cross examination she has stated that she worked with the employer continuously since the date of her employment, and that she was working for the same hours as other employees were working. She has also stated that her wages are paid at the end of the month and not daily. The statement of the workman that she was working continuously from the date of her appointment or that she continues to work with the employer as a helper has not been denied or dispute in her cross examination. The employer also did not deny or dispute the statement of the workman that her working hours were the same as that of the other helpers who were working with the employer. The employer also did not deny the statement of the workman that the employer had regularised the services of the other helpers. The above evidence on record shows that the workman is in the employment of the employer as a daily wagger for more than 10 years, and she has worked continuously from the date of her employment. The evidence also shows that the work of the helper which is being carried out by the employers is of perennial or permanent nature and the employment of the workman is required to carryout that work.

8. Adv. Shri Mane, representing the workman has relied upon the Judgement of the Allahabad High Court in the case of Bhullar Nath Yadav and others v/s Mayo Hall Sports Complex, Allahabad, reported in 1990 II LLN 946. In this case the services of the daily rated employees were not regularised because there were no sanctioned posts for lack of funds. The High Court however held that those employees who have put in more than 3 years of service on daily waged wages were entitled to be absorbed and their services are liable to be regularised, and directed the respondent Mayo Hall Sports Complex to prepare a scheme for regularisation and absorption on permanent basis of those daily wages who were continuously working for more than three years. In the case of Delhi Development Horticulture Employees Union v/s Delhi Administration, Delhi and other reported in AIR 1992 Supreme Court 789 it has been observed by the Hon'ble Supreme Court that the juridical trend is that those who have completed 240 or more days are directed to be automatically regularised. In the case of State of Hariyana & Others v/s Piara Singh and Others reported in AIR 1992 SC 2130, the Hon'ble Supreme Court has held that so far as the work

charged employees and casual Labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability for work. The Hon'ble Supreme Court further held that if a casual labourer is continued for a fairly long spell say two or three years a presumption may arise that there is regular need for his services and in such a situation it becomes obligatory for the concerned authority to examine the feasibility of his regularisation and while doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. The Hon'ble Supreme Court observed that security of tenure is necessary for an employee to give his best to the job. In my view in the present case, the case of the workman is covered by the authorities cited above. As mentioned earlier the services of the workman on daily wages have been continued for more than 10 years which is sufficiently a long period of time which gives rise to the presumption that there is regular need for her services. It is not the case of the employer that the workman is not qualified to hold the post of the helper or that there are no vacant posts or there is paucity of funds. The employer has simply denied the claim of the workman that her services are liable to be regularised. No evidence whatsoever has been led by the employer though opportunity was given. It has been not denied by the employer that the services of the other helpers who were working alongwith the workman have been regularised. In the light of what is discussed above, I hold that the workman has succeeded in proving that she is entitled to regularisation of her services and her demand in this respect is legal and justified.

9. The workman claimed that her services are liable to be regularised from 26-11-1986 that is, the date on which she claimed she joined the services of the employer on daily wages. This joining date was disputed by the employer and according to the employer the workman was appointed on daily wages on 1st June 1989. While deciding the issue No. 1 it has been held by me that the workman has failed to prove that she was employed from 26-11-86 and hence it has to be held that she joined the services from 1st June, 1989, being the date admitted by the employer. I have held that the workman is entitled to regularisation of her services. Her demand is that the regularisation should be from the date of appointment. The Hon'ble Supreme Court in the case of Delhi Development Horticulture Employees Union (supra) has held that the Judicial

trend is that those who have completed 240 or more days are directed to be regularised. This is because if a employee has worked for 240 days or more in the preceding 12 calendar months he is deemed to be in continuous service of one year. Which means that if a daily rated employee is in continuous service of one year from the date of his appointment, he is entitled for regularisation. In the present case the admitted date of appointment of the workman is 1st June 1989. Therefore she is entitled to be regularised from 1st June 1990. I, therefore hold that the demand of the workman that she should be regularised from the date of appointment is not legal and justified but she is entitled to be regularised from 1st June 1990, I, therefore answer the issue No. 2 accordingly.

10. Issue No. 3: This issue pertains to the relief to be granted to the workman. It has been held by me that the demand of the workman for regularisation of her services is legal and justified. It has been further held by me that the workman is entitled to be regularised in her services with effect from 1st June 1990. In the circumstances I hold that from the date of regularisation that is from 1st June 1990 the workman is entitled to the same pay and allowances as are payable to a regular employee in the same category with all consequential benefits including the differences in pay and allowances if any. I, therefore answer the issue No. 3 accordingly.

Hence, I pass the following order.

ORDER

It is hereby held that the demand of the workman Mrs. Indu Powar for regularisation of her services is legal and justified. However, it is held that her demand for regularisation of her services from the date of her appointment is not legal and justified. The employer Canacona Municipal Council shall regularise the services of the workman Mrs. Indu Powar from 1st June 1990. It is hereby further held that from 1st June 1990 the workman Mrs. Indu Powar is entitled to the same pay and allowances as are payable to a regular employee in the same category with all consequential benefits including the difference in pay and allowances if any.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/2000/5991

The following Awards dated 15-11-2000 in Reference No. IT/6/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 29th November, 2000.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/6/96

Shri Maruthi R. Naik,
Near the School Advalpal,
Assonora, Bardez-Goa ... Workman/Party I

V/s

M/s Kadamba Transport
Corporation Ltd.,
Panaji-Goa ... Employer/Party II

Workman/Party I — Represented by Shri G. S. Kubal.

Employer/Party II — Represented by Adv. S. S. Kamat.

Panaji, dated 15th November, 2000.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, (Central Act 14 of 1947) the Government of Goa by order dated 30-1-1996 bearing No. 28/65/95-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of M/s. Kadamba Transport Corporation Ltd., Panaji-Goa, in terminating the services of Shri Maruthi R. Naik, Conductor, with effect from 13-12-91 is legal and justified?

If not, to what relief the workman is entitled?"

2. On the receipt of the reference a case was registered under No. IT/6/96 and registered A/D

notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party I (for short, "workman") filed his statement of claim which is at Exb. 3. The facts of the case in brief as pleaded by the workman are that he was employed as a conductor with the Employer/Party II (for short, "employer") vide order dated 28-1-1982. That a charge sheet dated 10-10-90 was issued to him alleging that there was loss of revenue to the employer because of unauthorised absence for 143 days of the workman for the period from January 1989 to December 1989 and for 138 days for the period from January 1990 to October 1990. That the enquiry conducted against him in respect of the said charge sheet is not fair and proper and the Inquiry Officer was biased against him. That the findings given by the Inquiry Officer are perverse. The workman contended that the employer terminated his services from 13-12-91 illegally and without justification. That the workman filed a representation dated 15-2-96 which was rejected by the authority. The workman contended that since termination of his services is illegal and unjustified he is entitled to reinstatement in service with full back wages and other consequential benefits.

3. The employer filed written statement at Exb. 5. The employer admitted that the workman was employed as a conductor from 29-1-1982. The employer stated that from the date of appointment the workman used to remain absent unauthorisedly thereby disrupting the operation of the buses which resulted/caused inconvenience to the public. The employer admitted that the workman was charge sheeted and thereafter an enquiry was conducted against him. The employer stated that the enquiry was conducted in a fair and proper manner and in accordance with the principles of natural justice. The employer denied that the Inquiry Officer was biased against the workman. The employer denied that the findings of the Inquiry Officer are perverse. The employer denied that the termination of service of the workman is illegal or unjustified or that the same is in violation of any provisions of law. The employer denied that the workman is entitled to any relief as claimed by him. Thereafter the workman filed rejoinder at Exb. 6.

4. On the pleadings of the parties, issues were framed at Exb. 7 and thereafter the case was fixed for the evidence of the workman. Before the evidence of the workman was recorded the workman and the employer submitted that the dispute between them was amicably settled and they filed the terms of settlement dated 19-10-2000 at Exb. 14. Both the parties prayed for award to be passed in terms of the said settlement. I have gone through the terms of the settlement dated 19-10-2000 Exb. 14 which are duly signed by the parties and I am satisfied that the said

terms are certainly in the interest of the workman. I, therefore, accept the submission made by the parties and pass the consent award in terms of the settlement dated 19-10-2000 Exb. 14.

ORDER

1. It is agreed between the parties that the workman concerned in the reference shall be re-employed in the Corporation as a Conductor at initial basis pay of Rs. 3050/- in the pay scale of Rs. 3050-75-3950-80-4590 on regular basis. However, the Party No. I will not be entitled for any benefits of arrears/difference in wages from the date of dismissal to the date of joining.
2. It is agreed by the Employer/Party No. II that the workman concerned in the reference shall be eligible for terminal benefits i.e. Gratuity and carry forward of Privilege Leave balance which were to his credit at the time of dismissal for his past service.
3. It is agreed between the parties that the absence from the date of dismissal i.e. 13-12-1991 till the date of his joining will be treated as an leave without pay and hence he is not entitled for any consequential benefits.
4. It is agreed by the workman/Party No. I that the claim raised in the above reference shall stand conclusively settled and have no claim or any monitory benefit which can be computed in monitory terms.
5. It is agreed by the Employer/Party No. II that the workman concerned in the reference will be re-employed as a Conductor on regular basis within two days from the date of filing this consent terms.
6. It is agreed between the parties that the claim raised by the workman in the reference stand conclusively settled.
7. It is agreed by the Workman/Party No. I that he will fully co-operate with the Employer/Party No. II in maintaining the discipline and smooth functioning of the Kadamba Transport Corporation Limited and shall co-operate fully in bringing the corporation on sound footing.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.